

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**FAWZIA SAMADI,**

**Plaintiff,**

**v.**

**No. 13-cv-0275 SMV**

**CAROLYN W. COLVIN,  
Acting Comm'r of SSA,**

**Defendant.**

**ORDER GRANTING PLAINTIFF'S MOTION  
FOR ATTORNEY FEES AND COSTS UNDER EAJA**

THIS MATTER is before the Court on Plaintiff's Motion for Attorney Fees and Costs Pursuant to the Equal Access to Justice Act, With Memorandum in Support [Doc. 25], filed on August 8, 2014. Plaintiff requests attorney fees in the amount of \$6,410.64, and costs in the amount of \$350. *Id.* In her response [Doc. 26], the Commissioner expressly disclaims any objection to Plaintiff's request for attorney fees. However, the response does not mention the request for costs. *See id.* The Commissioner's failure to object to the award of \$350 in costs constitutes consent to grant the relief. *See* D.N.M.LR-Civ. 7.1(b). Moreover, the Court finds that Plaintiff is entitled to her costs under 28 U.S.C § 2412(a)(1) and (d)(1)(a). Accordingly, the Court, having considered the submissions of counsel, the record in this case, and the relevant law, and being otherwise fully advised in the premises, **FINDS** that the motion is well-taken and will be **GRANTED**.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion for Attorney Fees and Costs Pursuant to the Equal Access to Justice Act [Doc. 25] is

**GRANTED**, and Plaintiff Fawzia Samadi is authorized to receive **\$6,760.64** for payment to her attorneys for costs and services before this Court, as permitted by the Equal Access to Justice Act, 28 U.S.C. § 2412, and in accordance with *Manning v. Astrue*, 510 F.3d 1246, 1255 (10th Cir. 2007).

**IT IS FURTHER ORDERED** that if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. § 406(b) of the Social Security Act, counsel shall refund the smaller award to Plaintiff pursuant to *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) ("Congress harmonized fees payable by the Government under EAJA with fees payable under § 406(b) out of the claimant's past-due Social Security benefits in this manner: Fee awards may be made under both prescriptions, but the claimant's attorney must refun[d] to the claimant the amount of the smaller fee.") (internal quotation marks omitted).

**IT IS SO ORDERED.**



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**STEPHAN M. VIDMAR**  
**United States Magistrate Judge**  
**Presiding by Consent**